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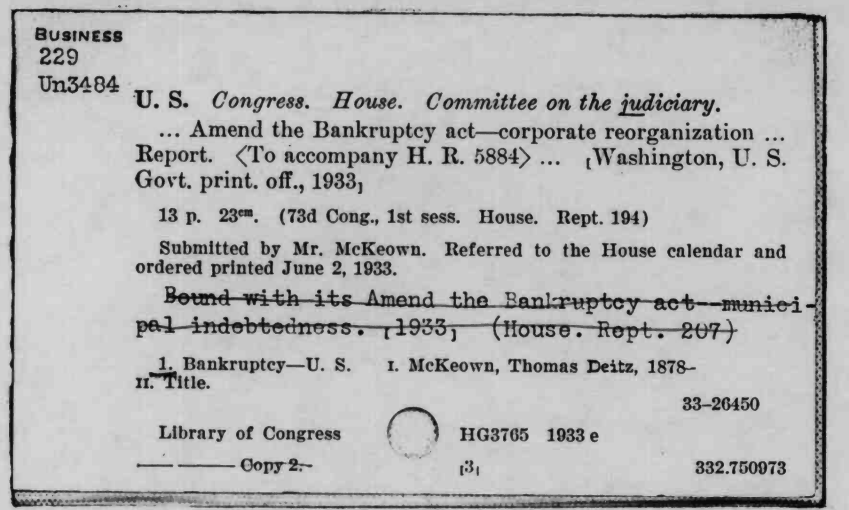

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U. S. *Congress. House. Committee on the judiciary.*
... Amend the Bankruptcy act—corporate reorganization ... Report. ⟨To accompany H. R. 5884⟩ ... [Washington, U. S. Govt. print. off., 1933]

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73D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 194

AMEND THE BANKRUPTCY ACT—CORPORATE REORGANIZATION

JUNE 2, 1933.—Referred to the House Calendar and ordered to be printed

Mr. MCKEOWN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5884]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5884) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto, after consideration, reports the same to the House with the recommendation that the bill do pass.

This bill if enacted will result in reducing the cost of reorganizing corporations entitled to its benefits in the following ways, provided, of course, a plan of reorganization is proposed and accepted by the required percentage of creditors and confirmed:

(1) Ancillary receiverships are obviated.

(2) Compensation of reorganization managers, counsel, etc., must be found by the judge to be reasonable and reimbursement is made for only actual and necessary expenditures, and an amendment is being proposed giving the right to appeal independently of all other appeals to the circuit court of appeals from orders fixing such compensation, such appeals to be heard summarily. This not only adds publicity in that the circuit courts of appeal will be informed, but it will tend to produce uniformity of charges throughout the particular circuit.

(3) The bill permits the debtor corporation to be the final reorganized corporation. This was done in the Phipps case. The charter of a corporation costs money and is an asset which should if possible be preserved for the benefit of the creditors and stockholders. Its charter would no doubt have to be amended where the plan provided for a composition rather than for an extension. The means specified in subdivision (b) for carrying out a plan includes as one of the means the amendment of the charter of the debtor.

(4) In order to permit of an extension the plan may provide for an extension of maturity dates or a change in interest rates or other terms, or the curing or waiver of defaults and the modification of liens, indentures, or other instruments. In some cases it may be only necessary to have a moratorium on sinking funds or a reduction in the amount thereof. This can be accomplished under the bill.

(5) Liens may be satisfied. This will avoid the costs of foreclosure where a mortgage indebtedness must be readjusted.

(6) The fact that outstanding securities may be amended or modified by change of interest rates or otherwise may make it unnecessary to have new securities engraved, printed, or otherwise prepared and issued.

(7) The court is authorized to continue the debtor in possession and in such case the salaries of officers must be reasonable and approved by the judge. Salaries of officers will likely be less than fees of trustees. In some cases officers will be willing to work for nothing in order to preserve the situation and their stock interest therein. Company officers will also keep down company counsel fees to a point lower than counsel fees of a trustee.

(8) The bill exempts from the stamp tax the issuance of the new securities, if any are issued, and thus prevents a duplication of tax. The tax has already been paid on the outstanding securities and the new securities, if any are issued, will merely take their place.

(9) The bill permits a plan of reorganization to be presented and accepted by creditors and stockholders before the institution of a proceeding under the bill. This will permit the shortening of the period of such proceedings. This was done in the National Radiator Corporation case, decided by the Circuit Court of Appeals for the Third Circuit in March 1933. In that case a plan was adopted and accepted by upward of 96 percent of the creditors before the receivership was applied for. The receivership was applied for in order to compel the minority either to accept the plan or to accept payment on the basis of an upset price which was fixed by the court. This is permitted by the bill.

Section 78 of this bill is a new section, granting the courts of bankruptcy jurisdiction in proceedings under the provisions of this bill. It corresponds to section 73 of chapter VIII, added to the Bankruptcy Act by the act of March 3, 1933.

Section 79 is entitled "Corporate Reorganizations" and provides for the reorganization of corporations. The scheme of the section is similar to that of section 77 of chapter VIII entitled "Reorganization of Railroads Engaged in Interstate Commerce." It provides that any corporation which could become a bankrupt under section IV of the Bankruptcy Act, and any railroad or other transportation corporation, except a railroad corporation authorized to file a petition or answer under the provisions of section 77 of the act, and except as provided in subdivision (n) of section 79, may file an original petition, or, before adjudication in an involuntary bankruptcy proceeding, an answer, or in any proceeding pending in bankruptcy, a petition, stating that the corporation is insolvent or is unable to meet its debts as they mature and that it desires to effect a plan of reorganization.

If the court is satisfied that the petition or answer complies with section 79 and is filed in good faith, it shall be approved, otherwise dismissed. If approved, the court in which the order of approval

May 15, 1939

is entered shall, during the pendency of the proceeding under section 79, have exclusive jurisdiction of the debtor and its property wherever located, for the purposes of this section. This eliminates the necessity of ancillary receiverships. Provision is made similar to that contained in the corresponding subdivision (a) of section 77 relating to railroads for a subsidiary to file a petition in the proceeding in order to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of the original debtor. Provision is made that in case the debtor does not file a petition, a petition may be filed by three or more creditors who have provable claims against the debtor which amount in the aggregate, in excess of the value of securities held by them, if any, to $1,000 or over. If the allegations of the petition are admitted it shall be approved. If the allegations are denied the issues shall be summarily treated without the intervention of a jury and if sustained the petition shall be approved, otherwise dismissed. Provision is also made that if a petition is filed by the debtor three or more creditors who have provable claims which amount in the aggregate in excess of securities held by them, if any, to $1,000 or over, or stockholders holding 5 percent of all shares of any class outstanding may appear and controvert the facts alleged in the petition or answer. The judge shall determine the issues presented by the pleadings without the intervention of a jury and unless the material allegations of the petition or answer are sustained by the proofs the proceedings shall be dismissed.

The plan of reorganization shall include provisions modifying or altering the rights of creditors generally or of any class of them, secured or unsecured, through the issuance of new securities of any character, or otherwise. It may include provisions modifying or altering the rights of stockholders generally or of any class of them, through the issuance of new securities of any character, or otherwise. It is required to specify what claims, if any, are to be paid in cash in full. It may reject contracts of the debtor which are executory in whole or in part, including unexpired leases. In case any creditor or stock holder or any class thereof shall not be affected by the plan, it must specify the creditor or stockholder or classes thereof not so affected and may contain such provisions with respect thereto as may be appropriate, and in case any controversy shall arise as to whether any creditor or stockholder or class thereof which is or is not affected, the issue shall be determined by the judge after hearing upon notice. The bill provides that no creditor or stockholder shall be deemed to be affected by any plan unless the same shall affect his interest materially and adversely. The plan may set forth and provide what shall be the complete capitalization of the reorganized company. It must also provide for the payment of all costs of administration and other allowances made by the court.

The plan must also make provision with respect to so-called "objecting creditors and stockholders", to which provisions reference will be made later.

The plan shall provide adequate means for its execution which may include the transfer of all or any part of the property of the debtor to another corporation or to other corporations, or the consolidation of the properties of the debtor with those of another corporation, or the merger or consolidation of the debtor into or with another corporation or corporations, or the retention of the property

by the debtor, the distribution of assets among creditors or any class thereof, the satisfaction or modification of liens, indentures, or other similar instruments, the curing or waiver of defaults, extension of maturity dates of outstanding securities, the change in interest rates and other terms of such securities, the amendment of the charter of the debtor, and the issuance of securities of either the debtor or any such corporation or corporations, for cash, or in exchange for existing securities, or in satisfaction of claims or rights, or for other appropriate purposes. A plan may deal with all or any part of the property of the debtor.

These provisions and the other provisions referred to permit the plan to be either a composition or an extension. All of the provisions providing what a plan must contain are contained in subdivision (b) of section 78.

Provision is made in subdivision (b) that in case the executory contract be rejected it shall be deemed to have been breached and the holder shall be entitled to file a claim for such breach and such claim shall be allowed provided such contract shall not have been terminated by forfeiture or reentry or otherwise.

Provision is also made that unsecured claims which would have been entitled to priority over existing mortgages, if a receiver in equity of the property had been appointed by a Federal court, shall be entitled to such priority, and the holders of such claims, and of other claims, if any, of equal rank, shall be treated as a separate class of creditors.

The judge may temporarily either continue the debtor in possession or appoint a trustee or trustees. A hearing is required on notice to creditors and stockholders within 30 days after the appointment of a temporary trustee, or, if no temporary trustee is appointed, within 30 days after the institution of the proceeding, and at this hearing the temporary trustee may be made permanent or other trustees may be appointed or the debtor may be continued in possession. The business of the debtor can be operated by either the debtor or trustee, if such operation is authorized by the judge, and the operation shall continue during such period, fixed or indefinite, as the judge may from time to time prescribe. Every trustee shall file a bond fixed by the court and upon filing such bond shall have all the title and shall exercise subject to the control of the judge and consistently with the provisions of section 79 all the powers of a trustee appointed pursuant to section 44 of the Bankruptcy Act.

If a plan of reorganization is not proposed or accepted within such reasonable period as the judge may fix, or is not confirmed, the judge may, after hearing, either extend such period, or dismiss the proceeding, or direct the liquidation of the estate, as the interests of the creditors and stockholders may equitably require, except that an order of liquidation shall not be made in the case of a railroad or other public utility or of a solvent debtor.

The judge may authorize the issuance of certificates for cash, property, or other consideration approved by the judge for lawful purposes upon such terms and conditions and with such security and priority as may be lawful in the particular case.

The debtor or trustee is required to file schedules and submit all information that is necessary to disclose the debtor's affairs and the fairness of any proposed plan. A reasonable time shall be granted

in which the claims or interests of creditors and stockholders may be filed or evidenced, after which time no such claims or interests may participate in the plan except on order for cause shown. Executory contracts may be rejected with the approval of the judge. For the purposes of the plan and its acceptance, creditors and stockholders are to be divided by the judge into classes according to the nature of their claims and interests and shall be entitled to notice of all hearings for the consideration of any plan or of the dismissal of the proceeding, the liquidation of the estate, and the allowances of fees or expenses. The judge may allow reasonable compensation and reimbursement and expenses incurred in the proceeding, by the trustee, reorganization managers, committees, and other representatives of creditors or stockholders and the attorneys or agents of any of the foregoing with provision for appeals, independently of other appeals in the proceeding, to the circuit court of appeals, the same to be heard summarily.

The judge may enjoin or stay the commencement or continuance of suits against the debtor and for cause shown after notice may enjoin or stay the commencement or continuance of judicial proceedings to enforce liens.

The judge may refer any matter to a special master for consideration and report, who may be a referee in bankruptcy.

Any creditor or stockholder shall have the right to be heard on the question of the permanent appointment of any trustee or the continuance of the debtor in possession and on the proposed confirmation of any plan, and, upon filing a petition for leave to intervene, on such other questions arising in the proceeding as the judge may determine. The debtor shall have the right to be heard on all questions.

In case the debtor is continued in possession, the debtor shall be subject to such limitations, restrictions, terms, and conditions as the judge may from time to time impose and prescribe, and during such period its officers shall be entitled to receive only such reasonable compensation as the judge shall from time to time approve, and no person shall be elected or appointed to any office to fill a vacancy or otherwise, without the prior approval of the judge.

A plan may be proposed by any creditor or stockholder either if approved by creditors whose interests are affected holding 25 percent in amount of any class and 10 percent in amount of all creditors, or, if the debtor is not found to be insolvent, by stockholders whose claims are affected holding 25 percent of any class of stock in number or 10 percent of all shares outstanding. The debtor may propose a plan without any such approval. A plan may be submitted if it is meritorious in itself, notwithstanding that the required approvals have not been obtained. It is considered that creditors and stockholders should have the right to consider a meritorious plan no matter by whom or how presented, subject to the right of the judge to arbitrarily refuse the consideration of any plan if not approved by the specified percentages. It will be difficult to obtain consents prior to a hearing and preliminary finding by the court that the plan is equitable and fair.

A plan shall not be confirmed until it has been accepted in writing by creditors holding two thirds in amount of the claims of each class whose claims have been allowed and would be affected by the plan and by stockholders holding a majority of the stock of each class. Such consent on the part of creditors is not required if their claims are

not affected or if the plan makes provision for the payment of their claims in cash in full, or for their protection in the manner provided in subdivision (b) of clause (5). Reference will be made later to the protection required. Such acceptance is not required on the part of any stockholder or class of stockholders if the judge shall determine either that the debtor is insolvent or that the interests of such stockholder or stockholders will not be affected by the plan or if provision is made for the protection of the interests of such stockholder or class of stockholders in the manner provided in subdivision (b) clause (4). Adequate provision is made in clauses (4) and (5) of subdivision (b) for the protection of such stockholders and creditors whose acceptances are not required.

With respect to such creditors the plan must provide either (a) for the transfer or sale of the property subject to the interests, claims, or liens of such creditors and/or by the retention of such property by the debtor subject thereto, or (b) by sale free therefrom at not less than a fair upset price and the transfer of such interests, claims, or liens to the proceeds of such sales, or (c) by appraisal and payment in cash of the value either of such interests, claims, or liens, or, at the objecting creditors' election of the securities, if any, allotted under the plan to such interests, claims or liens, or (d) by such method as will, in the opinion of the judge, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection. If alternative (b) above is adopted, the particular class of creditors would be in exactly the same position had the property gone through receivership proceedings and the property sold at a fair upset price to the reorganized company. All of the foregoing provisions must be contained in the plan.

A similar method is provided for dealing with the objecting stockholders, except that alternative (a) above is not applicable.

If the United States of America is a creditor or stockholder, the Secretary of the Treasury is authorized to act for it.

Subdivision (e) further provides in clause (2) that if the debtor is a utility to the jurisdiction of a regulatory commission created by the laws of the State or States in which the properties of the debtor are operated, the plan of reorganization of such debtor shall not be confirmed until (a) it is submitted to each such commission or authority and (b) an opportunity is afforded each such commission or authority to suggest amendments or objections, and (c) the judge shall consider such amendments or objections at a hearing at which each such commission or authority may be heard. If the debtor is a utility corporation operating wholly within one State the plan must be submitted to the regulatory commission or authority of such State for its approval before same is submitted. If the regulatory body of such State does not issue a certificate of public interest within 30 days or such additional time as the court may prescribe after the submission of a plan to it, it shall be deemed that the public interest is not affected.

Subdivision (f) provides for the confirmation of the plan. It may be confirmed if the judge is satisfied that (1) it is fair, equitable, does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible; (2) it complies with subdivision (b) prescribing what a plan must or may contain; (3) it has been accepted by creditors and stockholders as required by subdivision (e); (4) the provisions of subdivision (e) relating to amendments and objections suggested by State regulatory commissions or authorities in case of a public utility have been complied with, and in case of a public utility operating wholly intrastate that the plan has been approved by the regulatory authority of such State or that the regulatory authority has not filed a certificate of public interest within the time prescribed; (5) all amounts to be paid for services or expenses incident to the reorganization have been fully disclosed and are reasonable, or are to be subject to the approval of the judge; (6) the offer of the plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act; and (7) the debtor and every other corporation issuing securities or acquiring property under the plan is authorized by its charter or by applicable State or Federal laws to take all action necessary to carry out the plan when confirmed.

Amendments or modifications can be made in a plan provided that all of the requirements above listed of subdivision (f) relating to confirmation are recomplied with as respects the modified or amended plan. It is advisable that the bill permit modifications and changes in the plan after it has been confirmed. Experience suggests the advisability of such provision, as amendments are sometimes requisite, not only to obtain the requried number of consents, but also, after the required number of consents have been obtained, to provide for matters not foreseen, to correct errors, mistakes, omissions, etc.

Subdivision (f) also exempts any issues, transfers, or exchange of securities and conveyances necessary to carry out the reorganization from the provisions of the Revenue Act of 1932.

Subdivision (g) provides that after a plan is confirmed it is binding upon all creditors and stockholders whether or not their claims have been filed or allowed and including those who have not, as well as those who have, accepted. The plan when confirmed and carried out will set forth the capitalization of the reorganized company and there must be no uncertainty as to its finality.

Subdivision (h) provides for carrying out the plan under the orders of the judge and for the entry of a final decree. The final decree will discharge the debtor from its debts and liabilities and will terminate and end all rights and interests of stockholders except as provided in the plan and reserved in the orders of the judge. In this respect the act differs from the railroad reorganization act which provides that the order of confirmation shall operate as the discharge. It was felt by the committee that it is more appropriate and more protective of stockholders and creditors to provide that the final decree shall operate as the discharge.

If a receiver or trustee shall have been appointed by any State or Federal court before the institution of a proceeding under section 79, a proceeding under section 79 may nevertheless be instituted and if a proceeding so instituted under section 79 is subsequently dismissed, the estate of the debtor may under the orders of the judge be retransferred back to the possession of the receiver or prior trustee.

A certified copy of any decree or order of the judge shall be evidence of jurisdiction of the court, the regularity of the proceedings and the fact that the decree or order was made. The recording of a certified copy of the order directing the transfer of the property dealt with by the plan shall, if recorded, impart the same notice that a deed, if recorded, would impart.

Subdivision (k) provides that all provisions of the Bankruptcy Act, except such as are inconsistent with the provisions of section 79, shall apply to proceedings instituted under section 79. This subdivision also makes provision for the procedure to be followed in case the judge directs the liquidation of the estate of the debtor.

Subdivisions (l) and (m) correspond to subdivisions (p) and (q) in section 77 relating to railroads. They provide that no judge, debtor, or trustee shall deny or question the right of employees to join labor unions of their choice, interfere with the organization of employees, or use funds under the jurisdiction of the judge in maintaining so-called "company unions", or coerce employees in an effort to induce employees to join or remain members of such company unions, or require any employee to sign any contract or agreement promising to join or to refuse to join a labor union. If any such contract has been in force prior to the institution of the proceeding, the same shall be discarded and be no longer binding and the judge, debtor, or trustee must call this fact to the attention of the employees.

Subdivision (n) limits the right of a corporation to file a petition or answer under section 79 if such corporation operates a railroad or railway owned and/or operated in whole or in part by a municipality.

Subdivisions (o) and (p) contain jurisdictional provisions and provide that section 79 shall take effect immediately upon the approval of the act and that it shall apply to proceedings in bankruptcy which are pending on the effective date of the act.

It is the purpose of this bill to bring the exercise of the bankruptcy powers more in line, from a practical and helpful standpoint, with the necessities of both distressed debtor corporations and their creditors and to reduce the expense and delay of administration. The plan of the bill is to enlarge and facilitate, as far as is consistent with the rights of all parties in interest, the opportunities of amicable adjustment between debtor and creditor for rehabilitation and reorganization. While this bill has been framed with due regard for the present and immediate prospective unusual economic conditions, it is believed that an expansion of the opportunity for amicable adjustment by debtor and creditors, under the supervision and protection of the bankruptcy courts, and for holding the property of the debtor intact with its operation disturbed as little as practicable, such as is provided for in this bill, will prove itself to be of permanently helpful assistance both to distressed corporations and in line with the public interest.

The constitutional questions raised by this bill are the same as those which were raised by the Railroad Reorganization Act contained in section 77 of chapter VIII passed at the last session. All of the constitutional questions raised by that act were satisfactorily answered by opinions of the Solicitor General filed with this committee during the preceding session.

Your committee presents herewith excerpts from the memorandum submitted by Solicitor General Thacher to the Senate Committee on the Judiciary referred to:

In *Hanover National Bank* v. *Moyses* (1901), 186 U.S. 181, the constitutionality of the present Bankruptcy Act was challenged on the grounds that (1) it does not provide for notice as required by due process of law to creditors in voluntary proceedings; (2) the notice to creditors of discharge applications is so unreasonably short as to be a denial of notice; (3) the grounds of opposition to a discharge are so unreasonably limited as, substantially, to deny the right of opposition to a discharge; (4) the act is not a "uniform" law; (5) it provides that others than traders may be adjudged bankrupts, and that this may be done on voluntary petitions.

The Supreme Court rejected all of these contentions on broad historical grounds. The unanimous opinion, delivered by Chief Justice Fuller, contains a thorough survey of the almost unlimited powers of Congress over the relations between debtors and their creditors.

In the first place, most of the States from the beginning adopted "insolvency laws" providing for the distribution of the property of insolvent debtors, and, in many instances, for their discharge from the claims of local creditors. These laws were never termed "bankruptcy" laws nor were the debtors ever designated "bankrupts." But the matter of terminology is quite immaterial. The court quotes with approval (p. 185) from Mr. Justice Story's Commentaries on the Constitution (ch. XVI, sec. 1111), in his discussion of "what laws are to be deemed bankrupt laws within the meaning of the Constitution":

"Attempts have been made to distinguish between bankrupt laws and insolvent laws. For example, it has been said, that laws which merely liberate the person of the debtor are insolvent laws, and those which discharge the contract are bankrupt laws. But it would be very difficult to sustain this distinction by any uniformity of laws at home or abroad. * * * It is believed that no laws ever were passed in America by the Colonies or States, which had the technical denomination of 'bankrupt laws.' But insolvent laws quite coextensive with the English bankrupt system in their operations and objects, have not been unfrequent in Colonial and State legislation. *No distinction was ever practically, or even theoretically, attempted to be made between bankruptcies and insolvencies.* And a historical review of the Colonial and State legislation will abundantly show that a bankrupt law may contain those regulations which are generally found in insolvent laws; and that an insolvent law may contain those which are common to bankrupt laws." (Italics ours.)

Thus it is clear that the "subject of bankruptcies," in the constitutional phrase, is equivalent to the whole "subject of insolvencies," and that distinctions of terminology are beside the point.

The court next quotes with approval (p. 186) from the opinion of Mr. Justice Catron in *In re Klein*, decided in the eighth circuit court, and, by direction of the United States Supreme Court, printed "as being of general interest" in (1843) 42 U.S. (1 Howard) at page 277. Mr. Justice Catron, though sitting in this case as circuit judge, was an associate justice of the Supreme Court, which also included Mr. Justice Story, whose commentaries have just been quoted from. In upholding the constitutionality of the Bankruptcy Act of 1841, Mr. Justice Catron said:

"In considering the question before me, I have not pretended to give a definition, but purposely avoided any attempt to define the mere word 'bankruptcy.' It is employed in the Constitution in the plural, and as part of an expression, 'the subject of bankruptcies.' The ideas attached to the word in this connection are numerous and complicated; they form a subject of extensive and complicated legislation; of this subject Congress has general jurisdiction; and the true inquiry is, To what limits is that jurisdiction restricted? I hold it extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is the discharge of a debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress * * *."

The question, then, as to what is a "bankruptcy" law is one purely of substance. If it provides for the distribution of a debtor's property among his creditors, it is a "bankruptcy" law within the meaning of the Constitution. Terminology is of no importance. As Mr. Justice Catron pointed out, every State law is—

"a bankrupt law, in substance and fact, that causes to be distributed by a tribunal the property of a debtor among his creditors. * * * *Such a law may be denominated an insolvent law* (and never mention the words 'bankruptcy' or 'bankrupts'); *still it deals directly with the subject of bankruptcies, and is a bankrupt law, in the sense of the Constitution;* and if Congress should pass a similar law, it would suspend the State law while the act of Congress continued in force." (Italics ours.)

The Supreme Court, to continue with the opinion in the Hanover case, then states (p. 187) that "similar views were expressed under the act of 1867, by Mr. Justice Blatchford, then district judge, in *In re Reiman*, 7 Ben. 455" (1874, D.C.

N.Y., 20 Fed. Cases, 490) * * * and in *Kunzler* v. *Kohaus*, (5 Hill, 317), by Cowen, J., in respect of the act of 1841, in which Mr. Justice Nelson, then chief justice of New York, concurred. These two cases will be referred to presently.

The court next turns to the intent of the framers of the Constitution (p. 187):

"The framers of the Constitution were familiar with Blackstone's Commentaries and with the bankrupt laws of England, yet they granted plenary power to Congress over the whole subject of 'bankruptcies' and did not limit it by the language used. This is illustrated by Mr. Sherman's observations in the convention, that 'bankruptcies were, in some cases, punishable with death by the laws of England, and he did not choose to grant a power by which that might be done here'; and the rejoinder of Gouverneur Morris, that 'this was an extensive and delicate subject. He would agree to it, because he saw no danger of abuse of the power by the legislature of the United States.' (Madison Papers, 5 Elliot, 504; 2 Bancroft, 204.) * * *."

Here we have the Supreme Court in apparent accordance with the proposition that the power of Congress is so broad as to include even the death penalty.

In *Kenzler* v. *Konaus*, supra, the court said:

"The older lexicographers and those from whom the word [bankruptcy] was doubtless transferred into the Constitution treat it as exactly commensurate with insolvency. The following are the definitions of the word 'bankrupt' by Ash, who wrote his dictionary several years before our Revolution: Adj. 'Broken for debt; incapable of payment; insolvent.' Subst. 'A person incapable of paying his debts.'

* * * * * * *

"Looking thus at the uniform popular acceptation of the word from the earliest times and in all English countries, and supposing that to be the true one, I read the Constitution thus: *'Congress shall have the power to establish uniform laws on the subject of any person's general inability to pay his debts throughout the United States.'* " (Italics ours.)

In *In re Reiman*, supra, the exact question presented by the new chapter VIII proceedings was raised and disposed of. An amendment of 1874 to the Bankruptcy Act of 1867 made provision for compositions *"whether an adjudication in bankruptcy shall have been had or not."* [1] The debtor in such proceedings was referred to as a "debtor", although the word "bankrupt" was used in the other sections of the act. And the new section further provided that if the composition was not confirmed, or if it could not proceed without injustice or undue delay, "the debtor shall be proceeded with *as a bankrupt*." (Italics ours.) Here in substance was the exact distinction which the pending bill makes between debtors on the one hand and bankrupts on the other. In *In re Reiman* the constitutionality of the provision was attacked and upheld. Judge Blatchford, who later became a justice of the United States Supreme Court, delivered an opinion in which he exhaustively reviewed the origins of bankruptcy law in England and in this country. In upholding the constitutionality of the composition provisions, he quoted extensively from Story's Commentaries, including the following general conclusion that—

"Perhaps as satisfactory a description of a bankrupt law as can be framed is that it is a law for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts. And *a law on the subject of bankruptcies, in the sense of the Constitution, is a law making provisions for cases of persons failing to pay their debts.*" (Italics ours.)

He then reviewed the course of bankruptcy legislation in England. And now we come to the most striking part of his opinion. He referred to the fact that by a statute adopted in England in 1869 provisions were made for liquidations through assignments for the benefit of creditors and for compositions, both proceedings being outside of bankruptcy proceedings proper, but being subject to the condition that under certain circumstances (unjust delays, failure of a composition, etc.) the court could adjudge the debtor a bankrupt. Referring specifically to the provision for assignments for the benefit of creditors (in substance exactly comparable to those which appear in section 74 of the bill), Judge Blatchford stated that:

"It is in fact bankruptcy without petition or adjudication."

Regarding the English provision for compositions, he points out their close similarity to the American provisions: That while in England the proceeding is "without resort to bankruptcy", the court may adjudge the debtor a bankrupt

[1] Under section 12 of the present Bankruptcy Act there is a similar provision authorizing compositions without adjudication in bankruptcy.

under certain contingencies; and that similarly in the American provisions, if the composition is not confirmed or there is undue delay, "the debtor shall be proceeded with as a bankrupt."

While thus finding ample precedent in the English law for the American provisions, he finally concludes that the power of Congress is not in any way limited by English precedents, but is "general, unlimited, and unrestricted over the subject." And, having asked the question, What is the "subject of bankruptcies?" he concludes that—

"It is not properly, anything less than the subject of the relations between an insolvent or nonpaying or fraudulent debtor and his creditors, extending to his and their relief."

Thus it is concluded that since the bill provides for the distribution of the property of insolvent debtors, and for their discharge, it has to do with the "subject of bankruptcies"; that the particular forms of the proceedings and the terminology employed have no constitutional significance; and that, specifically, the distinction drawn in the bill between "debtors" and "bankrupts" is within the power of Congress and has already been considered and upheld by the courts.

In addition to the authorities cited by the Solicitor General, we submit the following cases:

In *Isaacs* v. *Hobbs* (282 U.S. 734) the Supreme Court holds—

"The exercise of this function (the power of the courts over bankruptcy) necessarily forbids interference with it by foreclosure proceedings in other courts, which save for the bankruptcy proceeding would be competent to that end. As mortgaged property ordinarily lies within the district in which the bankruptcy court sits, and the mortgagee can consequently be served with its process, the procedure usually followed is for that court to restrain the institution of foreclosure proceedings in any other. Where the land lies outside the limits of the district in which the bankruptcy courts sits, ancillary proceedings may be instituted in the district court of the United States for the district in which the land is and an injunction against foreclosure issued by the court of ancillary jurisdiction."

In the case of *Straton* v. *New* (283 U.S. 318), Mr. Justice Roberts, rendering the opinion of the court, said:

"The purpose of the bankruptcy law, passed pursuant to the power of Congress to establish a uniform system of bankruptcy throughout the United States, is to place the property of the bankrupt, wherever found, under the control of the court, for equal distribution among the creditors. The filing of the petition is, an assertion of jurisdiction with a view to the determination of the status of the bankrupt, and a settlement and distribution of his estate. This jurisdiction is exclusive within the filed defined by the law, and is so far in rem that the estate is regarded as in custodia legis from the filing of the petition. It follows that liens cannot thereafter be obtained nor proceedings be had in other courts to reach the property, the district court having acquired the exclusive right to administer all property in the bankrupt's possession. It may inquire into the validity of liens, marshal them, and control their enforcement and liquidation."

Mr. Justice Day, of the Supreme Court, in the case of *Whitney* v. *Wenman* (198 U.S. 539), after citing numerous cases, says, at page 552:

"We think the result of these cases is, in view of the broad powers conferred in section 2 of the bankrupt act, authorizing the bankruptcy court to cause the estate of the bankrupt to be collected, reduced to money and distributed, and to determine controverisies in relation thereto, and bring in and substitute additional parties when necessary for the complete determination of a matter in controversy, that when the property has become subject to the jurisdiction of the bankruptcy court as that of the bankrupt, whether held by him or for him, jurisdiction exists to determine controversies in relation to the disposition of the same and the extent and character of liens thereon or rights therein. This conclusion accords with a number of well-considered cases in the Federal courts."

This bill is a revision without change of its essential theory or purpose of section 75 of H.R. 14359 in the form in which it passed the House at the last session.

The subject of corporate reorganization is new to existing bankruptcy law except with respect to railroads. Attention is called to the fact that the bill covers any railroad or other transportation corporation except a railroad corporation authorized to file a petition or

answer under the provisions of section 77 and except as provided in subdivision (n) of the bill, whereas such railroads or other transportation corporations are excluded from the operation of the present bankruptcy statutes.

Section 2 amends section 74, subdivision (e), of the Bankruptcy Act, as amended, by adding a new clause providing that if the debtor fails to obtain the acceptance of a majority in number of all creditors whose claims are affected by an extension proposal representing a majority in amount, the debtor may submit a proposal for an extension including a feasible method of financial rehabilitation for the debtor which is for the best interest of all the creditors including an equitable liquidation for the secured creditors whose claims are affected.

Section 3 is designed to prevent a monopoly in the appointment of receivers in bankruptcy cases.

Section 4 (a) amends the Bankruptcy Act to provide that claims founded upon an award of an industrial accident commission of a State under workmen's compensation laws, which social legislation came into existence at least a decade after the enactment of the Bankruptcy Act of 1898, shall be a provable claim under section 63 (a) and by section 4 (b) of this act such claims are given priority under section 64 b (7) of the Bankruptcy Act. This section 4 (a) also provides that claims for damages respecting executory contracts including future rents shall constitute a provable debt in bankruptcy proceedings and shall be liquidated under section 63 of the Bankruptcy Act.

Section 5 is an amendment to the Bankruptcy Act which prevents an injustice to the bankrupt estate in cases where a bond is given to dissolve a levy, judgment, or other lien obtained through legal proceedings against a person who is insolvent at any time within 4 months prior to the filing of a petition in bankruptcy against him by providing that in case he is adjudged a bankrupt any such bond shall be deemed null and void, and any nonexempt property which the bankrupt may have pledged to indemnify the surety may pass to the trustee of the bankrupt's estate.

Section 6 gives conciliation commissioners provided for in section 75 of the amendment to the Bankruptcy Act enacted in the Seventy-second Congress free use of the mails in connection with official business. This is necessary because such commissioners have been held not entitled to such use of the mails to send out notices to creditors required by the act, and as the compensation of such commissioners is limited to $10 for each case, the postage required to be paid in sending out such notices frequently equals practically the entire amount of the commissioners' compensation in the case.

CHANGES IN EXISTING LAW

Section 1 of the bill inserts two new sections to chapter VIII of the bankruptcy laws.

In compliance with paragraph 2a of rule XIII of the rules of the House of Representatives changes made by the bill in existing law are shown as follows: Existing law proposed to be omitted is shown in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman.

(Subdivision (e) of sec. 74 of the Act of July 1, 1898, as amended)

SEC. 74. (e) An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims if unsecured have been allowed, or if secured are proposed to be affected by an extension proposal, which number must represent a majority in amount of such claims; and the money or security necessary to pay all debts which have priority unless waived and the costs of the proceedings, and in case of a composition the consideration to be paid by the debtor to his creditors, have been deposited in such place as shall be designated by and subject to the order of the court. *After the first meeting of the creditors as provided in subdivision (c) if the debtor fails to obtain the acceptance of a majority in number of all creditors whose claims are affected by an extension proposal representing a majority in amount, the debtor may submit a proposal for an extension including a feasible method of financial rehabilitation for the debtor which is for the best interest of all the creditors including an equitable liquidation for the secured creditors whose claims are affected.*

(Sec. 63 (a) of the act of July 1, 1898, as amended)

SEC. 63. (a) Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of a petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied [and] (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments; *(6) founded upon an award of an industrial accident commission, or other commission, body or officer, of any State or Territory having power or jurisdiction to make awards as workmen's compensation in case of injury or death for injury prior to adjudication; and (7) claims for damages respecting executory contracts including future rents whether the bankrupt be an individual or a corporation, which claims shall be liquidated under section 63 (b) of this act.*

(Clause 7 of sec. 64 (b) of the act of July 1, 1898, as amended)

(b) The debts to have priority in advance of the payments of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be * * * (7) debts owing to any person who by the laws of the States or the United States is entitled to priority.

(Sec. 67 (f) of the act of July 1, 1898, as amended)

(f) That all levies, judgments, attachments, or other liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, *and any bond which may be given to dissolve any such lien so created* shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien, *and any nonexempt property of his which he shall have deposited or pledged as security for such bond or to indemnify any surety thereon*, shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

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